

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
JANETTE L. SHAFER, :
:
Plaintiff, :
: 20-CV-3060 (VSB)
- against - :
: **OPINION & ORDER**
:
ANDREW SAUL, :
Commissioner of Social Security, :
:
Defendant. :
:
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Appearances:

Gary James Gogerty
Drake Loeb PLLC
New Windsor, NY
Counsel for Plaintiff

Heetano Shamsoondar
Office of The General Counsel
Social Security Administration
Counsel for Defendant

VERNON S. BRODERICK, United States District Judge:

On April 16, 2020, Plaintiff Janette L. Shafer filed this action pursuant to 42 U.S.C. §§ 405(g) and § 1383(c)(3), for a review of a final decision of the Commissioner of Social Security (“Defendant” or “Commissioner”). (Doc. 1.) On September 25, 2020, I referred this case to Magistrate Judge Debra Freeman for a Report and Recommendation. (Doc. 14.) Before me is Judge Freeman’s unopposed Report and Recommendation concerning the parties’ cross-motions for judgment on the pleadings. (Doc. 27 (“Report and Recommendation” or “Report”).)

Plaintiff previously appealed from the Commissioner’s final decision denying her Social

Security Disability Insurance (“SSDI”) benefits; after a report and recommendation issued by Magistrate Judge Stewart D. Aaron, which was adopted by District Judge Loretta A. Preska, the case was remanded for further proceedings. *See Shafer v. Colvin*, No. 16cv7941 (LAP) (SDA), 2018 WL 4233812 (S.D.N.Y. Feb. 15, 2018), *report and recommendation adopted*, 2018 WL 4232914 (Sept. 4, 2018). On remand, Defendant again denied Plaintiff’s SSDI benefits. (*See* Doc. 1 Ex. C; *see also* Report 1 & 18.)

On February 1, 2021, Plaintiff moved for judgment on the pleadings, arguing that the Administrative Law Judge’s findings violated the treating physician rule. (Doc. 16.) On June 16, 2021, Defendant filed a cross-motion for judgment on the pleadings. (Doc. 23.) On January 20, 2022, Judge Freeman filed a detailed Report and Recommendation finding that although the Administrative Law Judge did not violate the treating physician rule in his evaluation of certain evidence, he nevertheless failed to take sufficient steps to develop the record as he was previously directed by the Court to do. (Report 31–32.) Judge Freeman accordingly recommends that Plaintiff’s motion for a judgement on the pleadings be granted to the extent that the matter be remanded again for further proceedings, and that Defendant’s cross-motion be denied. (*Id.* 41.)

A district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). “To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985).

Although the Report explicitly provided that “[t]he parties shall have fourteen (14) days from service of this Report to file written objections” and “FAILURE TO OBJECT WITHIN

FOURTEEN (14) DAYS WILL RESULT IN A WAIVER OF OBJECTIONS AND WILL PRECLUDE APPELLATE REVIEW," (Report 42), neither party filed an objection.

I have reviewed Judge Freeman's thorough and well-reasoned Report and Recommendation for clear error and, after careful review, find none. Therefore, I ADOPT the Report and Recommendation in its entirety, and remand this case for further proceedings consistent with the Report and Recommendation.

The Clerk's Office is respectfully directed to close this case.

SO ORDERED.

Dated: March 18, 2022
New York, New York



Vernon S. Broderick
United States District Judge